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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/694,267 | 10/27/2003 | William E. Bowen | 24180-778002 | 2801 |

7590 05/05/2004
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EXAMINER

TARAZANO, DONALD LAWRENCE

ART UNIT PAPER NUMBER

1773

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/694,267

Applicant(s)

BOWEN ET AL.

Examiner

D. Lawrence Tarazano

Art Unit

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 24-29 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1 and 24 is/are rejected.
- 7) ☐ Claim(s) 25-29 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2/2/04</u> . | 6) <input type="checkbox"/> Other: ____ |

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DETAILED ACTION***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

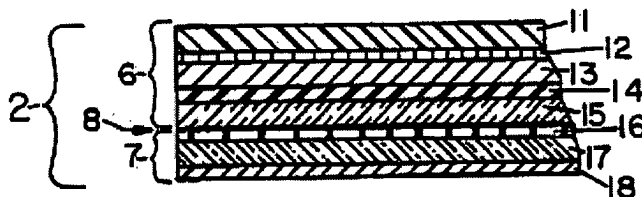
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 24 is rejected under 35 U.S.C. 102(b) as being anticipated by Davis (4,886,690).

Davis teaches a peelable film comprising an impermeable portion and a permeable portion. The permeable portion (7) comprises:

| | |
|--------------------|--------------|
| Sealant Layer (18) | VLDPE |
| Core layer (17) | VLDPE or EVA |
| Optical Layer (16) | ULDPE |

The impermeable section comprises a release layer containing EVOH (15), (column 6, lines 60+), and (column 7, lines 36) and barrier layer (13) also comprising EVOH..

**FIG. 4**

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1 and 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al. (4,886,690) in view of Kocher et al. (5,919,547).

Davis teaches a peelable film comprising an impermeable portion and a permeable portion. The permeable portion (7) comprises:

| | |
|--------------------|--------------|
| Sealant Layer (18) | VLDPE |
| Core layer (17) | VLDPE or EVA |
| Optical Layer (16) | ULDPE |

The impermeable section comprises a release layer containing EVOH (15), (column 6, lines 60+), and (column 7, lines 36) and barrier layer (13) also comprising EVOH.

The general structure of the laminate is shown by Figure 4 below, in which section (6) is the peelable impermeable layer and section 7 is the permeable membrane. Davis as discussed above teaches laminate structures comprising a three-layer permeable film (7) and a peelable portion (6), which forms an impermeable structure. The essential difference between the claimed structure and that taught by Davis et al. is that Davis et al. is silent regarding the use of PET (polyethylene terephthalate) in the impermeable layer.

Kocher et al. is analogous to Davis et al. in that they both teach peelable structures having a permeable layer; furthermore, they are used in the same field of endeavor, meat packaging.

Kocher et al. teach that the impermeable film can comprise barrier materials such as PET, (column 16, lines 51+).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used PET as a barrier layer as taught by Kocher et al. for use in impermeable layers of the film taught by Davis et al. since PET provides barrier properties.

Regarding Davis et al. and Kocher et al. while the structures taught are used in meatpacking, they do comprise a membrane, which is permeable to oxygen, and they made of polyethylene material, which is the same material used by the applicants. Since they materials are the same, it is the examiner's position that these prior art films would not only be permeable to oxygen but to aromatic products as claimed.

Allowable Subject Matter

5. Claims 25-29 are objected to as depending from a rejected claim. The closest prior art, Davis et al. (4,886,690) fails to teach structures claimed. The multilayer structures contain additional layers and materials not suggested by the prior art.

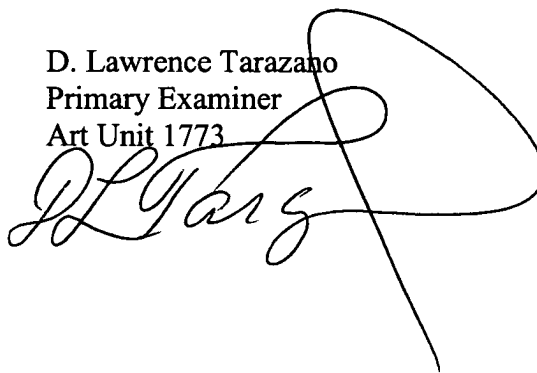
Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Lawrence Tarazano whose telephone number is (571)-272-1515. The examiner can normally be reached on 8:30 to 6:00 (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul J Thibodeau can be reached on (571)-272-1516. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D. Lawrence Tarazano
Primary Examiner
Art Unit 1773

A handwritten signature in black ink, appearing to read 'DL Tarazano', is written over the printed name and title. The signature is stylized with a large loop at the end.

dlt